



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,913	03/08/2004	James M. Brugger	T4342-14198US18	1674
181 7590 06/16/2008 MILES & STOCKBRIDGE PC 1751 PINNACLE DRIVE SUITE 500 MCLEAN, VA 22102-3833				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
06/16/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@milestockbridge.com
sstiles@milestockbridge.com

Office Action Summary

Application No.

10/796,913

Applicant(s)

BRUGGER ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-12 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6, 8-12, 18, 23 and 24 is/are allowed.
- 6) ☒ Claim(s) 16, 17, 19, 20 is/are rejected.
- 7) ☒ Claim(s) 21 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Remarks, page 11, filed January 16, 2008, with respect to the objection to claims 1 and 20 have been fully considered and are persuasive. The objection to claims 1 and 20 has been withdrawn.

Applicant's arguments, see Remarks, pages 11-13, with respect to the rejection of claims 1, 2, 4-6, 8-12 and 18 under 35 U.S.C. 102 have been fully considered and are persuasive. The rejection of claims 1, 2, 4-6, 8-12 and 18 under 35 U.S.C. 102 has been withdrawn.

Applicant's arguments with respect to claims 16, 17, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection. Briefly, Robinson teaches alternate embodiments of the instant device in which the control panel 16 can be physically separated from the housing 4 and operably coupled to the housing via cables. Robinsons cites cables as an example of the coupling means. It is examiner's position that this disclosure of operably coupling the panel to the housing by cables encompasses a panel that is instead be positioned on the second opposing portion, door 34, with a reasonable expectation of success. Therefore, the newly added limitation of claim 16 is rendered obvious by Robinson.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having

ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
3. Claims 16, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al (U.S. Patent No. 6,817,984).

With respect to **claim 16**: Robinson teaches a blood treatment system, comprising a blood treatment machine 2 with first and second opposing portions in the form of chassis 4 and door 34 respectively, spaced apart to form a gap therebetween (Fig. 1), said blood treatment machine 2 having at least one actuator 46,54,72 and at least one sensor 60 disposed on said first opposing portion. A support 38 is attached to the blood treatment machine 2. (Fig. 2) Disposable cartridge panel 22 holds a fluid circuit. The planar support element 38 is configured to position and orient various portions in the form of tubing segments 44A, 52A, 68A of said fluid circuit such that they are in position to be engaged by said multiple actuators 46,54,72 and sensor 60 when said cartridge 26 is placed within said slot (Fig. 2) Support 38 is configured to permit said cartridge panel 22 to be rested thereupon when said cartridge panel 22 is inserted in said gap (Fig. 2). The support 38 and said cartridge panel 22 are configured such that said fluid circuit, the at least one portion and at least another portion are aligned respectively with said at least one actuator 46 and said at least one sensor. The blood treatment machine first and

second opposing portions 4 and 34, respectively are movable with respect to each other to close around said cartridge panel 22 thereby causing said at least one actuator 46 to engage said at least one portion, e.g. 44A and said at least one sensor 60 to engage said at least another portion.

The first opposing portion 4 carries a user interface panel in the form of control panel 16. (Fig. 1, Col. 7, lines 44-46) Robinson does not explicitly teach that the second opposing portion 34 carries a user interface panel 16. However, Robinson discloses that the user interface panel may be physically separate from housing 4 and operably connected via cables, which fairly suggests positioning the physically separate panel on the second opposing portion 34 and operably connecting the panel to the first portion 4 via cables. (Col. 7, lines 46-49) It would be obvious to one of ordinary skill in the art to modify the device of Robinson such that the second opposing portion carries a user interface panel with a reasonable expectation of success.

With respect to **claim 17**: The at least one actuator taught by Robinson includes at least two pumps 46A, 54A, 72A. (Abstract, Col. 8, lines 19-21)

With respect to **claim 19**: The first opposing portion 4 taught by Robinson is considered herein to constitute a major portion of the blood treatment machine and the second opposing portion (door 34) is movably attached to the first opposing portion (chassis 4). (Fig. 1, Col. 8, lines 4-11)

With respect to **claim 20**: The first and second opposing portions 4,34 have opposing facing surfaces that lie adjacent the cartridge panel 22, which opposing facing surfaces are parallel when both are lying adjacent the panel 22 and remain parallel when closed around the cartridge panel 22. (Fig. 2)

Allowable Claims

4. Claims 1-6, 8-12, 18, 23 and 24 are allowed.

Reasons for Allowance

5. The following is an examiner's statement of reasons for allowance: Applicant amended rejected base independent claim 1 to recite a first surface that is parallel to a second surface with a gap formed therebetween, and to recite that the first and second surfaces remain parallel to one another during movement of the first and second opposing portions. The closest prior art of record, the Robinson reference, discloses first and second opposing portions with respective first and second surfaces that form a gap therebetween and are parallel to one another when they are closed around the cartridge panel 22. However, movement of the first and second opposing portions will never be in a manner such that the first and second surfaces are parallel to one another and remain parallel during movement of the first and second opposing portions, because that movement is effected by a pivoting motion of the second portion, door 34, toward the first portion, chassis 4, via support shaft 32. Further, modifying the device of Robinson to yield the claimed invention will destroy the function of the Robinson device, as the door would have to be removed with no alternate means for moving the door (second portion) toward the chassis (first portion) in the manner recited in claim 1, wherein this movement is necessary to engage the pumps with the actuators, an action that is necessary for prompting the circuit to operate to process a patient's blood. The reasons for allowance of independent claim 23 have been stated in the Office action mailed October 18, 2007. Newly added claim 24 is dependent upon independent claim 23 and is thus also allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the

Art Unit: 3761

issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Allowable Subject Matter

6. Claims 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761